

December 10, 2020

State Records Committee Meeting

Date: December 10, 2020

Time: 9:30 a.m. – 4:00 p.m.

Committee Members Present:

Kenneth Williams, Chair pro tem, State Archivist
Mark Buchanan, Private Sector Records Manager
Marie Cornwall, Citizen Representative
Nancy Dean, Political Subdivision Representative
Tom Haraldsen, Media Representative

Committee Members Not Present:

Patricia Smith-Mansfield, Chair, Citizen Representative
Vacant, Electronic Records and Databases Representative

Legal Counsel:

Paul Tonk, Assistant Attorney General
Nicole Adler, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Telephonic participation:

Craig Hale, Utah Local Government Trust

Others Present via Google Hangout:

Jessica Miller, Tribune
Bradley Jeppsen, West Valley City
Taylor Hartman, Utah Investigative Journalism
Blaine Benard, Beaver Valley Hospital
Craig Davidson, Beaver Valley Hospital
Tyler Moss, Beaver Valley Hospital
Nicole Hanna, Department of Agriculture and Food
Melissa Ure, Department of Agriculture and Food
Jeremy Beckham, Utah Animal Rights Coalition
Amy Meyer
Eric Peterson, Utah Investigative Journalism
Rosemary Cundiff
Susan Mumford
Steve Onysko
Kelly Sparks

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Kendra Yates
Matthew Pierce
ARFF Campaigns
Amy Meyer
Deepthi Prasanna
Rick Lynn
Pauly Bogle
Rachel Raeder
Rebekah Parke
Kiana
Carla
Curtis Vollmar
Nathan Herschler
Steven Nosittap
Felicia Holmberg
Aerielle McDermott
Matthew Braun
Christie Hendrickson
Akaysha Greer
Ed Butler
Bob Galvin
Taylor Sttevens
Petrus Leonardo
Pedras Anuleds
Carla Gabriella
Nic Gana
Kade Tyler
Aerélio Brito
Adri Ballif
Matthew Sttrugar
João Pitrete
Frances Chrzan
Christina Papianou
Mike Ryan
Russ Kick
Tiffany Young
Kyle Krakow
Larry Beckham

Agenda:

- Four Hearings Scheduled
 - Jessica Miller (Tribune) v. West Valley City Police (2020-109)
 - Hartman (Utah Investigative Journalism) v. Beaver Valley Hospital (2020-69)
 - Brady Eames v. Utah Local Government Trust (2020-65. 2020-80. 2020-82)

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- Utah Animal Rights Coalition v. Department of Agriculture & Food (2020-131. Expedited Appeal)
- Business:
 - Committee vacancy role change, action item
 - Approval of November 12, 2020, SRC Minutes, action item
 - SRC appeals received and declined, notices of compliance, and related action items
 - Cases in district court, report
 - Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The State Records Committee Chair pro tem, Kenneth Williams, called the meeting to order at 9:30 a.m.

Business part 1 of 3

The Chair pro tem read a letter stating the meeting will be held electronically and telephonically without an anchor location pursuant to Utah Code 52-4-207(4). The public may monitor the meeting and any public wishing to comment in the meeting can submit their request to the Executive Secretary. The letter is active for 30 days.

Motion by Mr. Williams to approve the October minutes. Seconded by Mr. Buchanan.

Aye: 5 Nay: 0. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Mr. Haraldsen, Mr. Williams voted in favor of the motion.

1. Jessica Miller (Tribune) v. West Valley City Police Department

The Chair pro tem announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Ms. Miller stated there is no greater responsibility than that of a police officer's decision to kill or not to kill a member of the community they are sworn to protect. She stated this case is when a West Valley Police sergeant killed a man named Chad Breinholt. She stated Mr. Breinholt was arrested the evening of his death for a suspected DUI. She stated she is seeking the entire body camera footage from the 2019 incident.

Ms. Miller stated the department has not released this footage in its entirety. Instead they have released an edited nine minute video. It includes graphics, narration by a spokeswoman, a deputy chief, and a frame by frame analysis of the moments leading up to Mr. Breinholt's death. She stated this is not all of the video and audio available.

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Ms. Miller stated the respondent argued in their response that there is little public interest in releasing the remaining footage. She disagrees. She stated the holders of information should not get to decide what information is relevant to the public and what is not. She stated the public has an interest to know whether officers perhaps escalated the situation. She stated in the footage Mr. Breinholt tells officers he has a gun in his shoe. She summarized the released footage. She stated the released footage does not show what happened before and after the shooting. She stated there are a lot of questions that could be answered if the full body camera footage were released.

Ms. Miller stated this cannot prejudice an investigation anymore than what has already been released. She stated this is improper and not in interest in transparency. She stated this shooting is unique because it was not in the public view. The only people who saw this use of force were West Valley City employees. She suggested West Valley City handle these the same way Salt Lake City does.

Ms. Miller stated police officers have enormous responsibility and transparency should be unbridled. She asked the Committee to reverse the respondent's decision to withhold the records.

Question from Committee:

The Committee asked if the dialogue she quoted from the officer before shooting Mr. Breinholt was in the nine minute video she saw. She said it was. The Committee asked if Salt Lake City releases full footage for all officer body cam. Ms. Miller stated they release all body cam footage for officer involved shootings to YouTube. The Committee asked if the video is after the press has packaged it for a presentation. Ms. Miller answered yes, they released videos with commentary from the police department. The Committee asked if Salt Lake posts video even when there is an investigation. Ms. Miller stated it is.

Respondent's statement:

Mr. Jeppsen stated West Valley City usually investigates Salt Lake City's critical incidents. He stated they released the video with the advice and consent of the investigating agency. He stated their policy is similar, but all incidents are treated on a case by case basis. He stated this incident was 16 months ago and they are still waiting for a ruling. He stated there are 9 hours of the investigation leading up to the incident.

Mr. Jeppsen stated these records are protected. He stated the City had a press conference within ten days. He stated these records involve an investigation of an alleged intoxication and stalking. He stated this is not an investigation into a critical incident. He stated releasing these records can reasonably be inspected to interfere with an investigation. He stated the City is not aware of the details of investigation because they employ the officer being investigated. The Salt Lake District Attorney's office has been investigating this for the last fifteen months.

Mr. Jeppsen stated what has been released will be admissible in court. He stated the hours leading up to it are not relevant to the use of force and likely would not be admissible in court.

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He stated he cannot predict the petitioner's use of the record or the public's reaction. He states the city believes they have satisfied the public's interest. He stated the records are protected, which means at some point that protection will run out and will be public. He asked the Committee to uphold the city's classification.

Question from Committee:

The Committee asked if there is video that does not have to do with the case. Mr. Jeppsen stated they are all related to the case, but not the officer involved critical incident. The Committee asked if they have the ability to redact footage. Mr. Jeppsen stated they do, but if they did, they would be before the Committee for an unredacted footage request instead. He asked if Ms. Miller agreed. Ms. Miller stated it is hard to say, but she believes there would be room for negotiation or discussion.

The Committee asked for clarification on what part of the investigation the City is aware of. Mr. Jeppsen stated the city called Salt Lake City and they began an officer-involved critical incident (OICI) investigation. They took statements from everyone on scene and those records are theirs. He stated the investigation was transferred to the District Attorney's office and under the OICI protocol, the records are not given to West Valley City until the District Attorney's office makes a decision. He stated he has no knowledge of what the DA's office is looking into at this point.

The Committee asked Mr. Jeppsen if he agrees that the nine hours could provide context for what happened. Mr. Jeppsen stated he does not. He stated it was a standard DUI investigation and changed to an OICI in the last five minutes.

Petitioner closing:

Ms. Miller stated police shootings do not exist in a vacuum. She stated releasing the records can help the public see what happened. She stated the time that has passed from the incident to the request should not have any weight. She stated GRAMA does not have a deadline on when a request can be made. She stated she requested these six months ago and part of the delay is waiting for the city to respond. She stated she doesn't see how this is any different from other OICI's that are routinely released. She stated a Utah officer has never gone to trial for an OICI.

Respondent closing:

Mr. Jeppsen stated these records will be released when the District Attorney's office rules and decides not to issue charges, or in the process of a court case. He stated every OICI is judged individually. He stated this case comes down to whether there is a public interest and the Committee can view the footage and decide. He stated he agrees officers are rarely charged but it is not something to guess. He stated this is still under investigation.

Question from Committee:

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The Committee asked if the respondent has received any information on when the investigation will be resolved. Mr. Jeppsen stated they do not have a liaison at the District Attorney's office and so he does not know.

Deliberation:

Motion by Ms. Dean to continue the hearing to January 14th to view the records in camera. Seconded by Dr. Cornwall.

Aye: 5 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

2. Taylor Hartman v. Beaver Valley Hospital

The Chair pro tem announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Hartman stated he started his investigation in late 2019, before the pandemic brought the public eye to nursing homes. He was going through inspection reports and noticed some nursing homes were getting bad inspection rates. He stated he discovered Beaver Valley Hospital owns more than half of Utah's nursing homes and has been participating in a program to get more funding to these nursing homes. He stated Beaver Valley Hospital has been under scrutiny for discrepancy in money receiving to improve patient care. He stated instead of giving that money to the nursing homes, the respondent was keeping it. He stated the public has a right to know how the hospital is using its money.

Mr. Hartman shared his screen to share a powerpoint presentation.

Mr. Hartman stated Beaver Valley Hospital is a governmental entity subject to GRAMA. He shared an image from the transparency website of the respondent's salaries and long term care funds.

Mr. Hartman stated quality of care has been a concern for years. He stated the Upper Payment Limit Program (UPL) is a federal program meant to improve nursing home care. It raises the amount a nursing home is paid for Medicaid patients. He stated the Hospital's UPL program is under scrutiny and legislative audit. He stated Mr. Davidson has stated the funds kept to the hospital are to cover expenses. Mr. Hartman stated when he asked what those expenses are the respondent has avoided his requests to see documentation.

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Mr. Hartman stated he is withdrawing two items from his request, but still requesting documentation showing all administrative fees charged by the hospital to management companies, documents showing transactions to and from Beaver Hospital and nursing homes, including whether those are UPL payments or management fees. Also salary information for administrators from 2015 to present.

Mr. Hartman stated information from audited financial statements is too broad and doesn't include every facility. He stated documentation of compensation is public under GRAMA. He stated these are in the public interest because it shows how quality of care is low while funds are high. He stated he is asking for a number of years to see how compensation has changed before and after participating in this program.

Question from Committee:

The Committee asked how much money was in seeding. Mr. Hartman stated it's millions of dollars. He stated it's matched money with the federal government. The Committee asked if any of the money he's asking about is seed money. Mr. Hartman stated there is seed money in the cost profiles, but it is not clear how money is going back and forth. He stated UPL funds are not supposed to be used for anything but patient care and he doesn't know if UPL funds are being used as seed money.

Respondent's statement:

Mr. Benard stated they did mediate and there was an agreement to resolve and dismiss this appeal and Friday Mr. Hartman reneged on the agreement. He stated it is clear from the discussions they've had with him that the petitioner does not fully understand the materials he has been provided. He stated this is a complicated program and these are complicated numbers.

Mr. Benard stated they have provided facility cost reports with thousands of lines of data, management agreements with all the facilities and they're at least 50 pages each. He stated the petitioner has received a significant amount of information and may not understand the data. He stated the UPL program is complicated. He stated every nursing facility that treats a medicaid patient, the facility loses money and needs to make up those deficits with programs like this.

Mr. Benard stated the facility costs reports provided are submitted to the Department of Health. It includes thousands of lines of data. He stated Beaver Valley does not charge fees, but pays fees to nursing home managers. He stated the quality of care has steadily improved.

Mr. Benard stated that they provided three years of financial statements and facility cost profiles. He stated there are no more records to produce. He stated one year of salary information was provided. He stated they are not required to generate new records and the petitioner has all the information he requested.

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Respondent's statement:

Mr. Hartman stated he has worked hundreds of hours on this and likely knows what the UPL program looks like in Utah. He stated he has been provided a lot of information, but what he needs has not been provided. He stated the facility cost profiles have good information, but he has not received it from all the facilities. He stated he should be able to get a list of 44 nursing facility management companies and how much they charge the respondent. He stated thousands of lines of data doesn't mean the data he needs has been provided.

Petitioner closing:

Mr. Benard stated the program is highly regulated and difficult to understand. He stated the information the petitioner has requested has been provided and they are not required to explain it.

Question from the Committee:

The Committee asked Mr. Hartman for a specific existing record he wants. He stated he believes it would be a transaction record. The Committee asked if he knows that it exists. He stated he is not sure.

The Committee asked Mr. Benard if the records provided from some facilities, but not all of them. How do the records not relate to all 44 facilities? Mr. Benard stated he has received a profile report for all 44 facilities. He stated a report for all the facilities has been provided. The Committee asked if he said they could be required from the Health Department. Mr. Benard stated part of the program requires each facility to complete an annual cost report and submit it to the Health Department. The Committee asked if Beaver Hospital has to provide that to the Health Department as well. Mr. Benard asked Tyler Moss to answer the question.

The Chair pro tem swore in the witness.

Mr. Moss stated he is the CFO for Beaver Valley Hospital. He stated the hospital is required to annually submit compliance certifications related to the UPL program, funds from operations when they seed. He stated they do not do a cost report like the facilities. He stated a Medicare report is submitted to Medicare.

The Committee asked if those are available from the Health Department. Mr. Moss stated they are. The Committee asked if the petitioner was directed to those reports. Mr. Moss stated those were not requested.

Deliberation:

Motion by Ms. Dean to deny the appeal in part per 63G-2-201(8) the respondent is not required to package or tailor the information. Also to grant the appeal in part he should be provided salary information 2015 to present. Beaver Valley Hospital should direct Mr. Hartman

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to the Department of Health reports that will give him the information he needs. Seconded by Dr. Cornwall.

Aye: 5 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Chair pro tem clarified the next hearing will have no petitioner present. Counsel asked the Executive Secretary to try to verify if the petitioner wants to participate but cannot.

The Committee took a 30 minute break for lunch.

The Chair asked if Mr. Eames had responded. The Executive Secretary stated he had not. The Chair asked Counsel for clarification that the Committee can proceed without the petitioner. Mr. Tonks stated it is not required for parties to be present and the Committee can make a determination based on what had been submitted. He clarified if the petitioner had asked to postpone the Committee would consider it.

Mr. Tonks asked the Executive Secretary to read the email from the petitioner. The Executive Secretary read the email from Mr. Eames which said "Dear SRC, I will be absent from the SRC hearing scheduled for today. Sincerely, Brady Eames." The Chair asked if the respondent was present. The Chair asked the Executive Secretary to reach out to the respondent.

The Chair asked Counsel if there has been a hearing with both parties absent. Mr. Tonks stated there has been. The Committee would use the submitted materials for their arguments. Counsel stated the Committee can determine if they can fairly make a decision based on the submitted materials.

Mr. Haraldsen recommended the Committee proceed with business to give the parties more time.

Business part 2 of 3

Appeals received, declined, notices of compliance, and related action items

The Bear River Health Department requested the Committee reconsider scheduling the appeal and have it denied instead because all responsive records have been provided. The petitioner did not believe the response was sufficient. The Committee stated this is the purpose of holding a hearing. The Chair directed the Executive Secretary to inform the respondent the hearing will proceed.

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The Executive Secretary stated the petitioner for appeal 2020-103 is in federal custody but she cannot locate him. She asked for direction as to what to do with the appeal. The petitioner could appeal the lack of decision from the Committee to district court. The Executive Secretary was directed to schedule out the appeal.

Dr. Cornwall asked if she needed to recuse herself in an upcoming appeal because she knows the petitioner. Counsel advised how to inform the parties during the hearing that there may be a conflict of interest.

Mr. Tonks reviewed the status of cases in district court.

3. Utah Animal Rights Coalition v. Department of Agriculture and Food

Both parties being present, the Chair pro tem announced the hearing and provided instructions and reviewed the procedures.

The respondent requested a motion for a continuance.

Respondent's statement:

Ms. Hanna stated they understand the importance and impact of COVID-19. They received notice of the hearing on Thursday afternoon and have 445 documents they prepared for the Committee. She stated the department has been following all state and federal guidelines regarding COVID-19 and animals in Utah. There are no reports of transmission of COVID-19 from quarantined animals to wildlife or humans. The threat to human or animal exposure of COVID-19 is increased by the release of these records. She requested the hearing be continued until the investigation into the quarantine of mink farms any other potential links have been concluded. Once the investigation is concluded then the Department can release the information.

Ms. Hanna stated the primary issue is the lack of notice. They received the appeal five business days before the hearing and had to prepare. She stated the task was daunting and they spent all weekend working on it and the lack of notice has not allowed them to fully prepare for the hearing. She stated the State Veterinarian is unavailable to testify.

Petitioner's statement:

Mr. Beckham stated it sounds like the respondent is ready to proceed. He stated he heard no arguments for a continuance. He stated the Committee already ruled to have an expedited hearing. He stated a delay does not protect public interest. He stated this should not be the first time the respondent gathers responsive records because they should have been gathered by the record officer to answer the request. He stated the appeal does not require getting into the science with the State Veterinarian.

Motion by Ms. Dean to deny the request for a continuance per R35-1-2(12)(c). Seconded by Mr. Haraldsen.

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Aye: 5 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion.

The meeting was disrupted by attendees. Counsel advised the Executive Secretary to deny access to anyone else trying to access the meeting.

Petitioner's statement:

Mr. Beckham thanked the Committee for granting the expedited request. He stated the department all exemptions apply to all the records requested. He stated there is overwhelming public interest in where COVID outbreaks happen on mink farms. He stated outbreaks have occurred on at least 9 different farms and workers have tested positive. Mr. Beckham stated European nations with large mink farm industries have implemented extreme interventions including shutting down fur farm industries. He stated COVID can mutate in mink and transfer to humans.

Mr. Beckham played a clip of Dr. John Easley, Director of Research for Fur Commission USA at the Commission's annual meeting in September. Dr. Easley stated if a lot of farms have outbreaks the COVID-19 recommendations could change because it is a public health issue. He stated there are farms in Denmark with outbreak where workers brought the virus to the farms, the virus changed in the mink, and the changed virus was transmitted back to people.

Mr. Beckham stated the fundamental issue before the Committee is if the public has a right to know if the commercial facilities in their communities are breeding grounds for an infectious virus. Does the public have a right to know how their government is monitoring the mutation of the virus in mink. He stated the respondent has not released anything even in a redacted form. He stated no reports of transmission doesn't mean there is no transmission.

Mr. Beckham stated the department wants full control of what will be released. He stated GRAMA requires transparency. He stated the department is taking contradictory positions by stating the risk is low but if someone steals a mink then the public health risk is high. He stated this does not justify keeping the public in the dark. He stated the farms are easy to find and the department has not made any argument why there is a security threat informing the public which farms had outbreaks. He stated these records cannot be withheld because of a livestock disease exception because COVID-19 is not a livestock disease, but a human disease.

Mr. Beckham stated releasing these records would not be detrimental to agriculture in the state. He stated GRAMA does not protect records that do not reflect well on the agriculture industry. He stated the public does not forfeit their right to transparency if the department neglected to inform companies records are subject to disclosure. He stated sharing records does not make a record confidential.

Mr. Beckham stated disclaimers at the end of emails is boilerplate and he believes this disclaimer is how they are protecting records under 63G-2-306. He stated the content needs to determine the classification, not a rubber stamp. He stated the respondent's answer seems to

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be more concerned about the fur industry. He stated he is not confident in the political will power for stricter lockdown measures should a variant strain from mink emerge.

Question from Committee:

The Committee asked if the respondent has denied everything he requested. Mr. Beckham said yes. The Committee asked if he wants the list of mink farms with positive cases. Mr. Beckham stated yes. The Committee asked if the diagnostic test reports he's requesting are routinely posted online. Mr. Beckham stated he has not been able to find any online. The Committee asked if he has checked. Mr. Beckham stated he has checked the respondent's website and federal sites.

The Committee asked if he wants correspondence since March from different agencies because he assumes they'll have that information. The Committee asked if he is guessing which entities would have relevant correspondence. Mr. Beckham stated he tailored his request based on media reports.

The Committee asked why he thinks the protocol and precautions being taken are protected. Mr. Beckham stated he thinks they should be public and if anything is online he is happy to access them online but he is unaware of where that information is online. The Committee asked if the protocol and precautions would be coming from Utah or federal entities. Mr. Beckham stated it could be from either. The Committee asked if he has checked with federal entities. Mr. Beckham stated he has a pending FOIA request.

The Committee asked if the biosecurity measure record is a phrase taken from the media. Mr. Beckham stated yes, there was a Fox Business article. The Committee asked if these are the specific items he was requesting. Mr. Beckham stated yes.

Respondent's statement:

Ms. Hanna stated the department recognizes the importance and impact of COVID-19. She stated the crux of the appeal is that the records are not based on the public concern of the pandemic, but the phasing out of the fur industry.

Ms. Hanna stated if the petitioner is concerned about public health, he would have requested records from the Department of Health related to Hogle Zoo, family farms, and animal shelters. She stated the petitioner is focusing on the industry he wants to eliminate.

Ms. Hanna stated they cannot disclose shared records because another entity has classified them. She stated there is a threat of harm to the subject of the records, as there have been over 1,000 mink stolen from farms. She stated there is an ongoing investigation.

Ms. Hanna obtaining records solely from the fur industry is not a public interest. She stated the public interest is the time needed to allow the department, the CDC, USDA, and the Department of Health to investigate COVID positive populations of mink and control any potential spread. She stated if the records are released, the investigation and their ability to

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work with the producers and entities who shared information classified protected would be damaged. She stated the only reason these entities and individuals share the information with the department is based on this understanding. Ms. Hanna stated animal to human possibility of transmission is extremely low. That has not changed despite the studies and changes in Europe.

Ms. Hanna stated they had provided information and links as they were able. She stated the CDC states this disease originated with bats. She stated they are not relying on boilerplate language in correspondence, but the documentation and classification from other entities that the records cannot be released to the public. She stated a lot of information is available online. She stated the petitioner knows where the mink farms are.

Ms. Hanna stated they have provided a summary of the GRAMA provisions and description of each. She stated this is a livestock disease despite its impact on humans. She stated the disease is not named in rules because it did not exist when the rule was written.

Ms. Hanna stated they rely on the classification so farmers will work with them and comply with biosecurity measures. She stated protecting the protocols and procedures prevent sabotage. She stated releasing those allows people to get around them. She stated protection of the records is paramount to control animal diseases.

Ms. Hanna stated the CDC is working on what the petitioner is asking about and he can ask the CDC about it. She stated some farms cannot separate personal and business details because it is the same information. She stated failure to comply with the protection of the records subjects the department to criminal charges. She stated all the subsections apply.

Ms. Hanna stated the petitioner's intent is to release the information to the public. She stated the information could prejudice individuals by allowing them to be pre-tried in the court of public opinion. She stated this is the petitioner's intent. She stated the department is cooperating with media outlets. She stated anything that would release investigatory techniques prohibits their ability to control future disease and has a chilling effect on the agriculture community as a whole in working with the department.

Ms. Hanna stated there is a wealth of information available online that is regularly updated. She stated the department does not have an obligation to provide the information if it's already available. Much of the information in the USDA, and CDC reports online are directly responsive to the petitioner's request. Those were provided to the petitioner. She stated they are not the owners of a lot of these records and the petitioner needs to do his due diligence and contact the record holders. She stated the petitioner is targeting an industry because he wants the industry to be stopped.

Question from Committee:

The Committee asked if there is any way to provide broad category information so the specific mink farm is not identified, similar to the daily COVID-19 statistics from the Department of

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Health. Ms. Hanna stated she would have to talk to the State Veterinarian about what information he is comfortable with releasing. She stated if they could mediate the request to narrow it down, they would be happy to do that. Ms. Hanna stated all the records were classified protected as a series related to a current and ongoing investigation.

The Committee asked if they are saying they cannot release correspondence received from the federal government. Ms. Hanna stated there is the potential that they could redact some but when they looked through the correspondence, they believe what the petitioner is looking for would be redacted. She stated they would be before the Committee anyway. She stated they have a concern about maintaining the confidentiality of the correspondence. The Committee asked if that would also be true about correspondence from the Fur Commission or Farm Bureau. Ms. Hanna stated she does not represent those entities, but her understanding is they are private entities. The Committee asked if they do not want to release information from a third party. Ms. Hanna stated they do not think they are allowed to release it. She stated they understand how important this is but they cannot conduct investigations if state and federal entities cannot share protected information with them.

The Committee asked if the protocol and biosecurity measures are records from the CDC and should be available online. Ms. Hanna stated some of that information is online, but department protocols are not released because they are done in conjunction with other entities. She stated releasing the protocols would allow people to get around them. The Committee asked if the request is only related to protocols on fur farms, not what the department is doing. Ms. Hanna stated those come from the CDC and USDA. The Committee asked if that is public because all farms are requested to follow them. Ms. Hanna stated links were provided to the petitioner for information they are aware was online. She stated there is also private information released to them by the CDC and USDA discussing protocols and biosecurity measures. The Committee asked if those are specific to particular farms. Ms. Hanna stated they are. She stated whether there is a suspected or actual case would be discussed.

The Committee asked if the ongoing investigations are done by Utah or federal officials. Ms. Hanna stated they are joint investigations. The Committee asked if the CDC and USDA provided the classification of the shared records in writing. Ms. Hanna stated she understands those agreements exist, but they did not have time to pull them all because agreements can be specific to programs. She stated she does not know if there is one specific to mink farming, but the state of emergency also provides protection to the records until a memorandum of understanding is signed.

Petitioner closing:

Mr. Beckham stated the state of emergency means there should be more transparency from government. He stated nothing he heard outweighs the public interest. He stated bats are not livestock so COVID-19 cannot be considered a livestock disease. Mr. Beckham stated there could be an investigation for the duration of the pandemic. He stated the assurance from the department is not enough and the respondent should provide the records.

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Mr. Beckham stated protecting the agriculture industry is not an exemption under GRAMA. He stated there is a unique threat from mink because they are the only animal identified to be bi-directional. They catch and transmit COVID-19. He stated the risk is not there with Hogle Zoo, but with mink farms. He stated this is why mink farms were shut down in Denmark. He stated they recognize the public threat. Mr. Beckham wants to know what they relied on to come to such different conclusions.

Mr. Beckham stated the mink farms know they have COVID outbreaks, so releasing that information does not jeopardize the investigation. He asked the Committee to look at subsection 206 and look at the records in camera. He stated the department cannot have a decades old memorandum of understanding preventing the release of correspondence with the federal government. He stated they need to be specific about what exemption applies. He stated the public has a right to know if there is correspondence addressing payouts. He stated the public needs to know about these records so they can protect themselves. He asked the Committee to order the records to be released.

Respondent closing:

Ms. Hanna stated the Committee can view the records in camera to determine if the department correctly classified the records. She stated the petitioner knows where the mink farms are. She stated the request goes beyond public interest. She stated records were shared with the expectation the records would be protected and they would be violating GRAMA if they released the records.

Ms. Hanna stated the CDC and USBA website show how many cases there are in each state. She stated they are trying to protect the individuals in those entities and the animals exposed and the communities around those entities from being harassed and from potential exposure. She stated mink have been released and they do not know where they ended up. She stated it is not true COVID-19 has only been detected in mink. She stated they are following CDC guidance and the CDC says the risk is low. She stated they are willing to work with the petitioner to narrow his request and provide what they can.

Questions from the Committee:

The Committee asked how many mink farms are in Utah. Mr. Beckham stated there are an estimated 38.

Deliberation:

Motion by Ms. Dean to continue the hearing on January 14th to review the records in camera. Seconded by Mr. Haraldsen.

Aye: 5 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion.

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The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee sauntered for 3 minutes.

4. Brady Eames v. Utah Local Government Trust

The Chair pro tem announced the hearing and provided instructions and reviewed the procedures. The petitioner was not in attendance.

Respondent's statement:

Mr. Hale stated the three appeals are for different record requests but all relate to the same thing. He stated the requests were denied because they do not produce records in the format or categorization requested. He stated all of their financial records have been provided in great detail. Mr. Hale stated their board books documenting every disbursement, revenue and investment have been provided.

Mr. Hale stated they are not required to create records for the requester. He stated the requester wants to know what tax funds were used from a city and they do not track it that way. Mr. Hale stated they do not create the records requested.

Question from Committee:

The Committee asked Mr. Hale to address each appeal separately as he did in the submitted materials.

Respondent's statement:

Mr. Hale stated they have no responsive records for appeal 2020-65. He stated the petitioner has all the records they have related to their investments. He stated the same thing for the other bonds requested. He stated they do not track tax money from Cache County or Logan City. He stated there are no special reports for that.

Mr. Hale stated appeal 2020-80 was a request for records from separate accounts. He stated they have one account and reporting breaks it into separate funds.

Question from Committee:

The Committee asked if the petitioner received that reporting. Mr. Hale stated the petitioner has.

Respondent's statement:

Mr. Hale stated they have provided records for all board meeting records since 1974. He stated they do not track financial information the way it was requested. He stated 2020-82 was also a request related to Logan City tax money. He stated this all relates to financial information which has never been denied. He stated all of their financial information has been provided to the petitioner.

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Question from Committee:

The Committee asked if Logan City sends money for services. Mr. Hale stated yes. The Committee asked if they invoice the city and the city sends a check. Mr. Hale stated a check or wire transfer and that is reported and available online.

Deliberation:

Motion by Ms. Dean to deny all three appeals because the trust has provided what they have and per 63G-2-201(8) they are not required to create a record. Seconded by Mr. Buchanan. Aye: 5 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

Business part 3 of 3

Committee vacancy role change, action item

Mr. Williams stated there is no applicant yet, so if anyone knew someone qualified for the role to send them his way. Dr. Cornwall asked if they had tried the statistics department at different universities. She said she'd check the faculty roster. The Chair said he and the secretary would reach out asking if they have a recommendation.

Committee members' attendance polled for next meeting, format and quorum verification.

The Chair verified a quorum will be present at the January 14th meeting.

Motion to Adjourn

The Chair adjourned the December 10, 2020, State Records Committee meeting at 3:15 p.m.

This is a true and correct copy of the December 10, 2020, SRC meeting minutes, which was approved on January 14, 2021. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

X /e/ Rebekkah Shaw
Executive Secretary